UBERMENSCH : THE CRIME & PUNISHMENT OF LEOPOLD & LOEB

SELECTED TEXT & BIBLIOGRAPHY

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" I am pleading for the future;

I am pleading for a time when hatred and cruelty will not

control the hearts of men,

when we can learn by reason and judgment and

understanding and faith

that all life is worth saving..."

(Clarence Darrow in Closing Argument of Leopold - Loeb Case, 1924)

Cited in : 137 Congressional Record S8527 - 05
"Proceedings and Debates of the 102nd Congress, First Session, Tuesday, June 25, 1991. "Violent Crime Control Act"
Senator Paul Wellstone at S8546

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INTRODUCTION

At the time of his death, the works of German philosopher Friedrich W. Nietzsche (1844 - 1900) were not widely-read and he himself had slipped into a catatonic state, being displayed by his family as somewhat of a freak. By 1939, his ideas had been distorted and misappropriated to justify the atrocities of the Third Reich in the guise of the "Master Race". In the 1920's though, his nihilist and relativism schools of thought were popular topics of intellectual discussion in Europe and the United States.

Developed throughout his six books, concluding with the idea that "God is dead" in Thus Spoke Zarathustra, Nietzsche's philosophy can be over-generalized to include the ideas that reason and morality are merely creations of human will otherwise without foundation, and that all truth is relative. When applied to personal conduct, these thoughts led to the belief that intellectual (and later - genetic) superiority released the bonds of conventional morality so that the intelligent man is beyond the laws of good and evil and is thus able to attain the level of "Superman" or *Ubermensch*.

In 1924, in Chicago, Richard Loeb and Nathan Leopold were two, brilliant teen-agers intent on demonstrating their Nietzschean superiority over the masses. After some small property crimes, it was thought that a "perfect" major crime, committed without emotion or detection, would prove their status as *Ubermensch*. The murder of 14 year-old Bobby Franks would be their vehicle.

Within ten days however, both were in custody naming the other as the originator of the plan. Franks was murdered, but his foot was seen sticking out of a culvert visable to a passing rail-road man. And, near the body was a pair of eye-glasses with a specialty frame that led directly to Nathan Leopold. Thus set the stage for Clarence Darrow's marathon argument to spare their lives based on testimony from "alienists" as practitioners of the fledgling field of forensic psychology/psychiatry were then known.

Following are selected full-text news reports, contemporaneous to the crime and in historical perspective including a first person acquaintence of Leopold and Loeb. The full text of case-law is presented relative to the murder of Loeb while in prison, and Leopold's suit based on a fictionalized interpretation of the crime. Bibliographic material includes subsequent caselaw citation, monographs, periodical literature of both a primary and secondary treatment of the case, academic dissertations and reviews of dramatic interpretations.

FULL - TEXT NEWS REPORTS

MAY 21, 1924 2 STUDENTS' KILLING OF BOY HORRIFIES CITY

Bobby Franks, 14, was heading home for supper in the South Side neighborhood of Kenwood. But only a block and a half away from his dinner table, little Bobby simply disappeared.

The boy had vanished into a car rented under a phony name by two University of Chicago graduate students. Ten days later, there would not be man, woman or child in Chicago who did not know the names of the murderous lads: Leopold and Loeb. Nathan "Babe" Leopold Jr., 19, and Richard "Dickie" Loeb, 18, were the pampered sons of prominent Kenwood families who set out to commit the "perfect" slaying because they thought it would be exciting.

The day after he disappeared, Bobby's naked body was found in a ditch along the Illinois-Indiana border. A pair of tortoise-shell eyeglasses was found near the body. Those and the typewriter that had been used to produce a $10,000 ransom note were the killers' undoing.

The glasses were traced to Leopold, and reporters located Leopold's school notes, typed on the same Underwood portable as the ransom note. Confronted with the evidence, Leopold and Loeb confessed on May 31.

The killers' wealthy parents hired legendary attorney Clarence Darrow. The boys pleaded guilty, but Darrow successfully persuaded the judge to spare their lives.

Less than twelve years later, Loeb was murdered in prison. Leopold spent 33 years in prison until his parole in 1958. He died of natural causes in Puerto Rico in 1971. He was 66.

CHICAGO TRIBUNE 150 YEARS. EVENTS THAT SHAPED CHICAGO. Ellen Warren, Tribune staff. Reprinted from "Chicago Days: 150 Defining Moments in the Life of a Great City", edited by Stevenson Swanson, Contemporary Books.

LEOPOLD, LOEB CARRY OUT KIDNAPPING

Dayton Daily News - Saturday, October 29, 1994

Roz Young

On Nov. 10, 1923 the Michigan Wolverines beat the Quantico Marines in the final football game of the year, completing a perfect season before 45,000 fans at Ferry Field in Ann Arbor. The Phi chapter of Zeta Beta Tau fraternity at 2006 Washtenaw Ave., held a victory party and afterwards the men went upstairs, undressed and went to bed.

At about 3 a.m., the front door opened and two masked men entered.

The fraternity brothers, who had undressed on the second floor of the house, leaving their clothing scattered about, slept on the third floor. The burglars went through the second floor, emptying pockets and wallets. When they left the house they took to their parked car money, watches, jewelry and an Underwood typewriter.

The following May, Richard Loeb, one of the fraternity burglars, and Nathan Leopold, Jr., parked their car outside the Hyde Park State Bank in Chicago. Loeb withdrew $100 from his account. The two then drove to the Morrison Hotel where Loeb registered as Morton D. Ballard of Peoria, Ill. He accompanied the bellhop, who carried his suitcase, to room 1031. Leaving the suitcase in the room, he rejoined Leopold in the car. Later that day Leopold, using Loeb's $100, opened an account at the Hyde Park Bank, using the name of the fictitious Ballard of the Morrison Hotel.

Four days later Leopold, giving the name of Ballard, rented a Willys-Knight touring car at The Rent-A-Car Co. He gave a telephone number of a Louis Mason in Chicago for reference. The proprietor called Mason, who vouched for Ballard. He did not know was that "Mason" was Loeb, and the number a pay station just around the corner. Leopold kept the car for several hours and returned it, asking the owner to send an identification card to his hotel so that he could rent a car without giving any references.

Leopold and Loeb drove to the Morrison Hotel, where Loeb planned to retrieve his suitcase, pay his bill and ask the clerk to hold any mail for him. The suitcase had vanished, and Loeb, frightened, left the hotel without asking for it or paying the bill. The two drove to the Trenier Hotel. Leopold went in and identified himself as Morton Ballard and asked the clerk to hold any mail for him. He then called the car rental agency and said he had moved to the Trenier Hotel and asked to have the identification card sent there. They drove to a hardware store to buy 35 feet of rope and then went to Leopold's home to write some letters.

Both Leopold and Loeb were sons of Chicago millionaires and lived in the suburb of Kenmore. On the morning of May 21 Sven England, the Leopold chauffeur, took Nathan's red Willys-Knight out of the garage and parked it in the driveway. Nathan came out of the house, climbed into the car and drove to the university for his morning classes in criminal law. After

class he met Loeb and they drove to the Rent-A-Car Co., where Leopold rented a blue Willys-Knight. He drove to a restaurant, and Loeb followed in the red car. After lunch Leopold, driving his own car, followed by Loeb in the rental car, drove to Leopold's home. Leopold explained to Sven that he wanted to transfer some things to his friend's car. After the transfer Leopold asked Sven to check over his car because the brakes were squeaking. Then the two drove away in the rented car to Jackson Park along the lakefront, where they waited for an hour.

At about 2:30 p.m. they drove back to Kenwood and parked near the Harvard School, a boys' prep school that both had attended. When school let out, the eighth grade boys started a game of baseball on the school grounds.

At the end of the game a 14-year-old boy started to walk to his home on Ellis Avenue, a few houses down the street from the Loeb house. His name was Bobby Franks. His father was a wealthy former pawn broker who had made millions in real estate in Chicago.

As Bobby walked along south on Ellis Avenue, a car, heading north, passed him. Near Bobby was 9-year-old Irving Hartman Jr., also walking home. Irving stopped to look at some tulips blooming in a garden, and when he looked up, Bobby had disappeared.

Bobby did not come home from school at the usual time, nor did he come later. His parents, Jacob and Flora Frank, became concerned and began calling Bobby's friends. After the ball game, he had vanished. Frank searched the neighborhood, and thinking he may have become locked in the school, searched it.

At home Bobby's mother answered the telephone. A voice asked for Mr. Franks. "He is not here," she answered.

"Your son has been kidnapped," the caller said. "He is all right. You will receive further news in the morning."

"Who is this?"

"Johnson," the voice answered. Then the caller hung up.

Mrs. Franks fainted.

She was still unconscious when Jacob Franks and Samuel Ettelson, a Chicago attorney, to whom Franks had turned for help, returned from searching the school. After Mrs. Franks revived and told them about the call, Ettleson called the telephone company and asked to have all calls traced. He and Franks then went to the police, but the decision was to do nothing until morning for fear of alarming the kidnappers, who might harm Bobby.

CLARENCE DARROW COMES TO THE DEFENSE

Dayton Daily News - Saturday, November 19, 1994

Roz Young

Two weeks after the murder of Bobby Franks, the Cook County grand jury indicted Nathan Leopold and Richard Loeb on 11 counts of murder and 16 counts of kidnapping.

The families of the two boys hired the most famous attorney in the country, Clarence Darrow, to represent the boys. Gossip was that he had been promised the largest fee ever paid in a criminal case: $1 million.

At the arraignment the well-dressed prisoners pleaded not guilty to all counts and were returned to jail. For both Chicago newspapers the crime was a circulation bonanza. Both the Tribune and the Herald and Examiner published interviews with leading psychiatrists and psychoanalysts about the characters of the boys and even tried to get world-famous psychiatrist Sigmund Freud as a commentator on the trial. He declined the offer.

The preliminary hearing began at 10 a.m. July 21, 1924 before Chief Justice John R. Caverly in the criminal courts building in Chicago. State's Attorney Robert E. Crowe appeared for the prosecution and Clarence Darrow and two assistants, Benjamin and Walter Bachrach, for the defense. Present were members of all three families involved.

Darrow stunned the courtroom in his opening statement by withdrawing the not-guilty plea and entering a plea of guilty. He had earlier explained to the prisoners that Crowe would try them for murder and if he did not get a verdict of hanging, he would then try them on the kidnapping charge. Pleading guilty to both charges would deprive Crowe of the second chance. In addition, by pleading guilty they could avoid a jury trial. A single judge would hear the evidence to guide him in setting the sentence. Although Justice Caverly had presided in five previous jury trials that ended in death sentences, Darrow believed that he had a better chance of saving the boys from the gallows with Caverly than with a jury. He asked that the judge allow him to present evidence of the mental state of the youths when they committed the crime and of their extreme youth.

Both defendants then pleaded guilty. Benjamin Bachrach, Darrow and Crowe then approached the bench. Crowe said in spite of the change in plea, he would present all the evidence he had gathered, and Bachrach suggested that there should be a conference between the alienists who had been hired by Darrow and the alienists for the state. He suggested that the defense psychiatrists wished to meet with those for the state, all of whom respected one another, to see if they could agree on a report and avoid clashing testimony. Crowe refused. The judge set the hearing to begin in two days.

In his opening statement Crowe exhibited the evidence he had gathered: Leopold's eyeglasses, the blood-stained floorboards from the rented Willys Knight, the Underwood

portable typewriter, which a diver had found in Jackson park and which had been stolen from the fraternity house, the ransom letter and the note about throwing the ransom money off the train found in the train telegraph box. Crowe spoke for 90 minutes, ending with a demand for the death penalty for "both of these cold-blooded, cruel and vicious murderers."

Darrow's opening statement took only five minutes, pointing out that the judge would disregard the lurid remarks made by the prosecution and "do in this case what is just, fair and merciful."

The prosecutor called 81 witnesses before he rested his case a week after his arguments began. Darrow cross-examined very few prosecution witnesses.

Testimony for the defense lasted from July 30 until Aug. 19. The first witness called was Dr. William A. White, superintendent of St. Elizabeth Hospital in Washington, D.C., the country's
largest mental institution. He was also president of the American Psychiatric Association.

Immediately the prosecution objected to the introduction of psychiatric testimony as mitigation of a crime. The judge heard arguments from both sides the rest of the day, all the next day and until almost noon the third day. He overruled the prosecution's motion and the trial resumed. Also he ruled to admit the report of two other psychiatrists that had been released to the public in the newspapers. The report consisted of 50,000 words of testimony, the result of hours and hours of interviewing the two defendants. The report revealed details about their personal life, their criminal life and their motivation for murdering Bobby Franks. What emerged from White's testimony was that all of Loeb's life had been in the direction of his own self-destruction. He had a criminal bent; Leopold had no criminal tendencies but was drawn into crime by his love for Loeb.

White testified all day Friday and concluded on Saturday morning. On Monday morning Dr. William Healy, director of the Judge Baker Foundation, which was established for the study of juvenile behavior problems of the courts, took the stand. Much of his testimony concerned sexual activity between the two prisoners and was given in whispers or in a cleared courtroom. Healy's opinion was that Leopold had a paranoid personality and believed that anything he wanted to do was right, even kidnapping and murder. Loeb's mind, Healy believed, was definitely abnormal. At this Crowe asked the judge to halt the trial and call a jury, but his request was denied. Healy's account of sexual perversions practiced by the boys increased newspaper circulation all over the country.

LEOPOLD, LOEB MADE TO PAY ;
FLAMBOYANT ATTORNEY COULDN'T KEEP PAIR OUT OF PRISON

Dayton Daily News - Saturday, November 26, 1994

Roz Young

Clarence Darrow called three psychiatrists, the Loeb family physician, two fraternity brothers of Richard Loeb, two of his girl friends, and two law students in Leopold's classes to testify for the defense. What emerged from the testimony was that Loeb was the instigator of the crime, and Leopold participated because of his love for Loeb. Neither boy showed any regret for his actions.

During the long trial Clarence Darrow emerged almost as a folk hero, while State's Attorney Robert Crowe impressed people as a mean-spirited man who delayed the trial unnecessarily by his badgering questions of each witness.

The defense, which called its first witness July 30, rested at 2:30 Aug. 19.

Then began the summations. Assistant State's Attorney Thomas Marshall spoke first, reciting case after case as precedent for hanging. Another assistant state attorney, Joseph Savage, followed him with the argument that "If we do not hang these two most brutal murderers, we might just as well abolish capital punishment, because it will mean nothing in the law. And I want to say to your honor that the men who have reached the gallows prior to this time have been unjustly treated if these two men do not follow!"

Walter Bachrach spoke first for the defense, attempting to inform the court concerning mental disease. On Friday afternoon Aug. 22 an unruly crowd stormed the courthouse. Hundreds of people wanting to hear Clarence Darrow speak packed the halls and stairways. The judge had to force his way through the crowd to get into the courtroom. Darrow's speech was delayed until bailiffs cleared the building of all but the press.

Darrow spoke for two hours, and then Judge Caverly adjourned the court until the next morning. He made eloquent pleas against capital punishment in his remarks the next day. On Monday morning court reconvened again and Darrow spoke with such emotion that when he finished, Judge Caverly's cheeks were wet with tears.

State's Attorney Robert Crowe was the final speaker. He accused the two youths of performing a perverse sexual action on Bobby Franks, which caused the judge to clear the court of all women spectators and finally adjourned the court for the day. Crowe spoke all day Wednesday, attacking the defense testimony, witness by witness. He concluded his remarks on Thursday morning with an remark that Leopold had said he would prefer to plead guilty before

a friendly judge to insure escaping a hanging, and that in Crowe's words "It looks as though he has found one." The remark caused the judge to say, ". . . the court will order stricken from the record the closing remake of the state's attorney as being a cowardly and dastardly assault upon the integrity of this court."

Crowe apologized, but the judge was wrathful and would not accept his apology. After 32 days of testimony, Judge Caverly adjourned the court, announcing that he would give his decision on Sept. 10.

The judge's decision was life imprisonment on the charge of murder and 99 years on the charge of kidnapping without parole.

The prisoners were taken in chains to the Illinois State Prison. Leopold was assigned to the rattan factory and Loeb to the chair factory. At the end of the first year Leopold was promoted to clerical work in the shoe factory, and Loeb was named straw boss over other prisoners cleaning the prison yards.

Leopold was transferred to the prison at Stateville, where over the years he obtained better jobs. Although he sometimes had fights with other prisoners and was disciplined several times for infractions of the rules, he adjusted well to prison life. He reorganized the prison library, which gave him freedom to travel within the prison. He could visit Loeb, when he was transferred to Stateville and worked in the prison greenhouse.

In January 1932 the two started a school for prisoners. Loeb was director of the school and taught English composition, history and Spanish. Other prisoners taught English literature, Latin and mathematics. Leopold was the librarian.

James Day, a robber serving 10 years, was Loeb's cellmate. Loeb, who received $50 a month allowance from his family, gave Day, who had no income, cigarettes, candy and food. Day was jealous of Loeb and told many stories about him, especially that Loeb planned a prison break and asked him to get him four guns. He promised Day $5,000 and a job in Chicago on his release. Day also said that Loeb offered him $20 a week for sex.

Jan. 28, 1936 Leopold and Loeb had breakfast together in one of their cells. The rest of the morning they worked on an algebra course for the school and corrected papers. At 11:30 Loeb took a towel and clean clothes to a shower in the school room .

James Day, walking at the end of a lunch line at noon, ducked into the shower room. Shortly afterwards the door opened and Loeb, naked and covered with blood, staggered out. Day, dressed in trousers only, walked out and handed the guard a straight razor. ""He was trying to bother me," said Day. Leopold received permission to go to the hospital, where he found Loeb had received 58 razor wounds. Despite blood transfusions and efforts of prison doctors and two Loeb family physicians, Loeb died. He was 30 years old. Day was tried for Loeb's murder but was acquitted. He told his story of the relationship with Loeb and the murder in the May 1960 True Detective magazine.

In the years after Loeb's death Leopold took many university courses by correspondence, wrote a parole booklet, wrote his autobiography, "Life Plus 99 Years," raised canaries and became an X-ray technician. He also volunteered to work with a group of research scientists from the University of Chicago seeking a cure for malaria. The volunteers were promised parole consideration. In 1947 some volunteers received releases; others received reduction of their sentences. Leopold had not yet served his minimum time.

He appeared before the parole board in April 1949. On Sept. 22 the board commuted his 99-year sentence to 85 years. This meant that he would be eligible for release in January 1953. His request was rejected at that time and continued for another 12 years. He then appealed for clemency from the governor, who denied his appeal but suggested he again petition the parole board. He received a parole in 1958 after 33 years in prison. The Church of the Brethren acted as his sponsor, and he went to a hospital in Puerto Rico operated by the Brethren Service Commission where he worked as an X-ray technician. He sued Meyer Levin for libel in his book Compulsion but lost the case. After two years working in the hospital, he earned an M.S. degree at the University of Puerto Rico, taught mathematics at the university, worked in urban renewal, did research on leprosy for the university school of medicine and wrote a book on the birds of Puerto Rico. In 1961 he married a widow from Baltimore, who was operating a flower shop in San Juan. In 1963 when his parole ended, he traveled extensively, staying with old friends from Chicago and college days.

He was diabetic and starting in 1970 began to have heart trouble, He died at 66 in August 1971 in San Juan; he willed his body to the University of Puerto Rico for research.

THE FIRST CRIME OF THE CENTURY THEN AN 11-YEAR-OLD BOY, DEUTSCH WAS ALMOST LEOPOLD AND LOEB'S "THRILL MURDER" VICTIM IN 1924

Pittsburgh Post-Gazette - Tuesday, September 10, 1996

Armand Deutsch

My murder was carefully planned to take place in Chicago on May 21, 1924. I was spared, but on that date two young men, Nathan Leopold and Richard Loeb, did kill another young boy in what came to be known as "the crime of the century."

It turned out, in fact, to be the first crime of the century. Seventy years later, the O.J. Simpson case was, I hope, the last one.

Crimes of the century are a peculiarly American phenomenon. The ingredients are a particularly heinous murder, wealth, celebrity and high-profile, high-salaried defense lawyers. These elements combine to create a media and public frenzy that spreads far beyond the United States. Dominick Dunne, the most famous of the O.J. Simpson reporting army, had to leave the trial for a few days to go to London on business. One midnight, he hailed a taxi. The cabby recognized him instantly and plied him with questions about the trial.

It was no mystery why Loeb and Leopold singled me out as the prime prospect for their heinous crime. My grandfather, philanthropist Julius Rosenwald, was the chairman of the board of
Sears, Roebuck and Co. His prominence suited their purposes. Dickie Loeb's father was Sears' vice president. Our families were friends. I was a pupil at Nathan "Babe" Leopold's bird-watching classes in nearby Jackson Park. At 19, Dickie was already a gifted ornithologist. So I knew and trusted both older boys, a great plus as they formulated their plans for a thrill killing.

For an 11-year-old boy, life seven decades ago in the Kenwood section of Chicago's South Side was quiet and peaceful. Now a Los Angeles resident, I recently revisited the area. I was surprised by its smallness. My grandfather, the Loebs, the Leopolds, my family and the Harvard School for Boys were all contained within a six-block area. At the school, my fourth-grade classmates included Tommy Loeb, Dickie's younger brother, and the murder victim, Robert Franks.

Although considerably larger than the distance between Nicole Brown Simpson's condominium and the O.J. Simpson estate, the Loeb-Leopold murder that captured headlines around the world was truly a neighborhood crime. It seems inconceivable that these two young men who achieved such infamy were spawned in this peaceful, prospering enclave.

Loeb and Leopold were distinguished from other children by their brilliance. Both skipped grades with ease; each graduated from high school at 15. Both enrolled at the University of Chicago but transferred to the University of Michigan, where they roomed together.

Graduating Phi Beta Kappa at an age when other boys were receiving high school diplomas, they seemed destined for distinguished futures.

Leopold possessed the greater intellectual capacity. He was conversant in 15 languages. He also was a disciple of the Nietzschean superman philosophy. Loeb was bright, witty and superficial. Physically attractive, he was an obsessive conversationalist to whom lying came as naturally as breathing.

They hardly arrived at the "perfect murder" concept as newcomers to crime. Behind them stretched a series of unlawful acts so long that there was justification in their belief that getting caught was the private preserve of fools. A series of college fraternity burglaries was followed by several cases of arson. And there may have been other murders. In one case, the victim's family
sued Loeb and Leopold, who were already in prison. Their families settled out of court.

My murder was conceived out of frustration. None of their previous crimes had brought them the thrill or attention they craved. This act, performed upon a member of their affluent neighborhood clan, would provide certain vague exhilaration and extensive fame. Months of planning sessions followed. Murder techniques, body disposal and follow-up tactics were orchestrated without trepidation, doubt or pity.

Inevitably, the planning of my murder was concluded. On May 21, Dickie and Babe, in their rented Willys-Knight, cruised around the Harvard School looking for me. Instead, they found my 10-year-old classmate, Robert Franks, high on their list of acceptable candidates. Like me, Bobby knew and trusted both of them. He was picked up halfway home on his walk from school. Who drove and who sat in the back seat remain an unsolved mystery. Loeb and Leopold both steadfastly claimed to be the driver.

Quickly the car turned into a deserted alley. Franks was struck a series of concussive blows from the back seat with a pointed chisel. His body was pushed and shoved to the floor of the back seat, where more crushing blows ended his life.

Covering the body with a rug, they headed for Indiana. Following their plan, they cruised the streets near Hammond for some hours and bought sandwiches, which they ate in the car. When darkness came, they drove to a marshy area known as Wolf Lake. They dragged the body to a nearby culvert, disrobed it and doused it with hydrochloric acid to make identification difficult. They then shoved it in headfirst. They left Franks' feet protruding from the culvert, which led to discovery of the body in less than 24 hours. Of far greater significance, a pair of glasses fell from Leopold's pocket.

Eight days after the crime, the glasses were traced to the fashionable optician Almer Coe and Co., who placed an identifying mark on its spectacles. Only three people had this prescription.
The other two had airtight alibis. When questioned, Leopold wriggled glibly, saying that he had dropped the glasses while bird watching. The glasses were as pivotal as were the gloves in the

O.J. Simpson case. The glasses fit; the gloves did not.

On May 31, state's Attorney Robert E. Crowe brought Loeb and Leopold in for questioning. In separate confessions, each claimed that the other had conceived the idea and committed the actual murder. The "perfect crime" had unraveled in 10 days. That afternoon, prosecutor Crowe told the press that Loeb and Leopold had revealed my selection as the primary victim. This revelation was highlighted in the June 1 newspapers. One ran a front-page photograph of my mother with the caption "Her Son Escaped." Enter Clarence Darrow

How had I avoided certain death? My daily routine was to walk home from school. Had I followed it on May 21, I surely would have accepted Dickie and Babe's invitation for a ride. Instead, the family chauffeur picked me up for a dental appointment. Measuring the number of my dental appointments against the number of schools days, the odds against me were formidable.

My parents reacted swiftly. I was taken out of school, and we moved to our secluded summer home in Ravinia, Ill. While I had no official bodyguard, I was never alone. The newspapers, except for the sports pages, mysteriously vanished. I was told about the murder so obliquely that I probably knew less about it than anyone in Chicago.

Clarence Darrow was not so blessed. After midnight on June 2, the incessant ringing of the doorbell woke up Chicago's famous attorney. His four unwelcome, agitated visitors, led by Loeb's uncle, pleaded with him to save the lives of the two boys. Money was no object, Darrow was told.

Darrow's abiding conviction that the death penalty constituted murder by the state was the cornerstone of his life. He had grown older than his 67 years defending more than 100 convicted
murderers. The public and the press had invariably stood against him. Darrow surely understood that defending high-profile, wealthy, pampered killers would heap enormous abuse on him. Yet he thought he could strike a lethal blow against capital punishment by saving Loeb and Leopold from the gallows. He accepted the case.

On June 6, an indictment of first-degree murder was handed down. A trial date of July 16 was announced. District Attorney Crowe was supremely confident. He had two signed confessions. The opportunity to oppose the mighty Clarence Darrow in such an open-and-shut case was a plum dropped into his lap. Acclaim and career advancement lay ahead.

From the beginning, Crowe was in the position of a club fighter up against Joe Louis, in much the same way that O.J. Simpson's prosecutors were overmatched. Crowe's strategy was based on a trial by jury. On the first day of the trial, Darrow changed the arraignment plea from "not guilty by reason of insanity" to "guilty." This maneuver allowed him to waive a jury trial. The decision would be in the hands of the judge. "I would rather try to convince one man than 12," he said.

Psychiatrists and other experts appeared for both sides. Darrow argued persuasively that they canceled each other out. He regularly stressed the youth of his clients and his belief that killing by the state was murder. "I may hate the sin, but never the sinner," he said.

Homosexuality was not openly discussed 70 years ago in America. When it was revealed that these two well-born boys were homosexual partners who had sexual relationships with numerous other men, the outcry for a guilty verdict intensified.

The trial created riotous media attention. Huge throngs, held back by mounted police, converged on the courthouse demanding public hanging. Courtroom watchers were aghast watching Leob and Leopold snicker and exchange coded glances, oblivious to the waves of revulsion that swept through the courtroom.

Darrow described his clients as two defective machines. He said they had been deprived since birth of an emotional system and were not to blame for their genetic failure. Appropriate punishment would be life sentences without parole. Darrow had considerable help from his opponent. Crowe insisted that Franks had been murdered for ransom by two high-stake gamblers deep in debt and afraid to admit it to their parents, a strategy that badly misfired. Darrow's gentle, masterfully delivered closing argument contrasted sharply with the prosecution's shrill cry for blood. The 32-day trial ended on Aug. 28. Two weeks later, the judge ruled in favor of Darrow. The next day, Sept. 10, 1924, Loeb and Leopold rode together to prison in Joliet, Ill.

In the fall, my family transferred me to a new school in an attempt to provide me a measure of anonymity. The attempt failed. On my first day, a new classmate asked for my autograph. It marked the beginning of an odd celebrity status that to this day is part of the fabric of my life.

Loeb's life sentence was terminated after 12 years of imprisonment. He was stabbed to death in the shower by a life prisoner resisting his sexual advances. The jury found the killer not guilty. One reporter wrote, "Richard Loeb, who was a master of the English language, today ended a sentence with a proposition."

Leopold confounded everyone by his immediate adaptation to prison life. He conducted classes, upgraded prison libraries and participated in malaria experiments. The phrase "model prisoner" began to filter outside the walls.

In 1949, a parole board reduced Leopold's sentence to life plus 85 years, making him eligible for parole in 1953. His parole requests were denied in 1953, 1955 and 1956. That year, Meyer Levin's best-selling novel "Compulsion," based on the Loeb-Leopold case, was published.

In 1957, actor Roddy McDowall, a veteran of hundreds of stage and screen roles, played Dickie in the hit Broadway production of "Compulsion." Only when he realized that Loeb had murdered Franks as a form of entertainment was he able to perform the part.

In 1958, 34 years after the Franks murder, Nathan Leopold was paroled and left for Puerto Rico to become an X-ray technician.

When he was paroled, I received several calls from newspaper reporters asking how I felt about it. Since I mistakenly pictured him restricted to Puerto Rico and performing worthwhile work, it did not disturb me. Years later, I was angered to learn that after his release from parole, he traveled at will. He frequently visited family in Chicago. These trips gave him pleasure, an emotion denied the Franks' family from the day of their son's grisly death.

Leopold lived for 13 years after his release. He married and also sued Meyer Levin for slander. He died from natural causes in 1971.

Today, murder in America has become so commonplace that it has lost its ability to horrify us. Not so with crimes of the century. We have never become immune to them. The public outcry to the murders of Nicole Brown Simpson and Ronald Goldman was similar to the reaction to the murder of Bobby Franks. After the verdicts, a vast majority felt that Loeb and Leopold should have been executed and that O.J. Simpson was wrongfully acquitted.

The color of a great defense in a crime of the century is green - money. The Loeb and Leopold families could afford Darrow. O.J. Simpson could afford Johnnie Cochran and the "dream team."

At age 83, I probably will not live to see the first crime of the 21st century. My life experience leads me to two predictions: The international media and the public will be universally mesmerized - and the defendant, if rich, will avoid the death penalty, and perhaps even conviction.

CASELAW - FULL TEXT

SUPREME COURT OF ILLINOIS
376 Ill. 509, 34 N.E.2d 712 (1941)

PEOPLE ex rel. DAY
v.
LEWIS, Warden.
No. 26027.

Original proceeding by the People, on the relation of James E. Day, for a writ of habeas corpus to be directed to O. H. Lewis, Warden of the Pontiac Division of the Illinois State Penitentiary.

Relator remanded to respondent's custody.

WILSON, Justice.

James E. Day, by an original petition for a writ of habeas corpus filed in this court against O. H. Lewis, warden of the Pontiac division of the Illinois State Penitentiary, seeks to obtain his discharge from the penitentiary. The writ issued and the respondent made a return, followed by a motion to quash the writ and dismiss the petition. The relator filed an answer and traverse and, subsequently, without prejudice thereto, a motion to strike the return. The cause is submitted upon the record so made.

February 19, 1932, the relator, then nineteen years of age, entered the Illinois State Reformatory at Pontiac under an indeterminate sentence of one to ten years, imposed in the criminal court of Cook county upon his plea of guilty to a charge of larceny. The petition alleges that on August 16, 1934, relator was transferred to the Stateville branch of the penitentiary, at Joliet; that on January 28, 1936, Richard Loeb, a fellow prisoner, armed with a razor, attempted to compel his submission to immoral advances of a perverted nature, which relator forcibly resisted; that a fight ensued and, in self-defense, relator obtained the razor and cut Loeb, who subsequently died. Thereafter, the relator was indicted for the murder of Loeb, and, on June 4, 1936, following his trial, a jury in the circuit court of Will county returned a verdict of not guilty. June 5 and 6, 1936, Joseph E. Ragen, warden of the penitentiary at Joliet, in letters to the director of the Department of Public Welfare, recommended the forfeiture of all of relator's statutory good time and his punishment for the violation of the prison rules resulting in the inmate's death. The director, on July 21, 1936, approved the warden's recommendation and forfeited the relator's earned time. The relator's sentence, which would have expired May 19,

1938, if credited with the time allowable for good behavior, will now terminate February 19, 1942, upon the completion of his full term. The petition further charges, as demonstrating that the forfeiture was instigated by malice rather than a lawful exercise of discretion, that immediately following his acquittal, and at other times, relator was placed in solitary confinement on a diet of bread and water and demoted to the lowest standing under the progressive merit system. In addition, it is stated, that relator was transferred, without an examination or hearing to determine his sanity, to the psychiatric division of the penitentiary, at Menard, on December 7, 1938, and subsequently returned to the Pontiac division of the penitentiary, formerly the reformatory, to avoid an expected petition for a writ of habeas corpus, based upon his confinement in an institution other than that specified in the mittimus of the criminal court. Respondent's return to the writ avers that relator's time was forfeited because of five specified violations and infractions of the rules of the institutions wherein he had been confined. Relator, in reply, does not deny the acts enumerated, but asserts that the first four were trivial infractions.

The respondent challenges the jurisdiction of this court, contending that the granting or withholding of credit for good behavior is within the exclusive power of the executive department, and that its decisions are immune to judicial review. The allegations in relator's petition, that his earned good time has been forfeited arbitrarily, conferred upon this court jurisdiction to determine whether or not administrative discretion has been abused. People ex rel. Titzel v. Hill, 344 Ill. 246 (1931).

Relator contends that the allegations in his petition were admitted by respondent's motion to quash the writ and dismiss the petition, and, further, that the averments of infractions in the return are not competent evidence because they are not supported by a copy of the penitentiary records. The first part of this contention, in effect, is that respondent's motion, being in the nature of a demurrer, admits all facts well pleaded. By filing his answer and traverse to the return, the relator recognized that the respondent's motion had been irregularly filed without leave of court after his return was of record. The return to a writ of habeas corpus requires no supporting evidence, but imports verity until impeached. Holden v. Minnesota, 137 U.S. 483 (1890); Crowley v. Christensen, 137 U.S. 86 (1890). Had the relator desired to contest the averments in the return, it was his privilege to deny the occurrence of the infractions or to cause the production of pertinent records. On the contrary, his answer and traverse amount to a demurrer, since the acts are not denied, but four of them are attacked merely as trivial and the fifth is contended to be guiltless as a matter of law. The infractions, therefore, were properly presented for our consideration.

The authority of the Department of Public Welfare to forfeit the entire time allowable to a prisoner for good conduct upon his committing five infractions of prison rules is not denied, nor is the fact disputed that the relator committed four of the infractions charged in the return. The controversy here presented concerns the averment of the fifth infraction, consisting of relator's fight with Richard Loeb and cutting him, which resulted in his death. The conduct as charged is admitted, but the relator protests that the verdict of not guilty, returned by the jury in the circuit court of Will County, exonerated him from the crime of murder, and that the forfeiture of his earned good time was an unauthorized review of the criminal proceeding, resulting in the

imposition of punishment upon him for the same crime. The separate functions of the judicial and executive departments of government have been sharply delineated and must not be blended and confused. The power of the judiciary in a criminal proceeding is limited to the trial of an accused for a specific violation of law charged in an indictment and for no other offense, and, if he is adjudged guilty, to the pronouncement of the punishment provided by the Legislature for the crime charged. People ex rel. Weed v. Whipp, 352 Ill. 525 (1933). This, the criminal court of Cook County did when it sentenced relator to an indeterminate term upon his plea of guilty to a charge of larceny. Similarly, the jury in the circuit court of Will County considered only the question of relator's guilt or innocence of the crime of murder, and its verdict did not encompass any other violation of the criminal law, which might have been committed by the same conduct, nor, for the greater reason, a violation of purely administrative regulations. The function of the executive department, on the other hand, is to administer the sentence imposed by the court and to apply, as an inherent part of evert indeterminate sentence, the rules pertaining to the diminution of punishment for good conduct. People v. Connors, 291 Ill. 614 (1920); People v. Joyce, 246 Ill. 124 (1910). An indeterminate sentence is for the full term allowed by law for the crime, and the administrative department, in deciding that a prisoner's conduct does not merit his release for good behavior after serving less than the full term, cannot be said to increase the sentence. People v. Connors, supra. Although the forfeiture may flow from conduct involving a criminal offense, the prisoner is neither tried nor sentenced for a violation of the criminal law, and his punishment consists solely in the serving of the balance of his sentence originally imposed. Story v. Rives, 97 F.2d 182 (D.C. Cir., 1938); Jarman v. United States, 92 F.2d 309 (4th cir., 1937). It is for this reason that the administrative department is not required to adhere to formal procedure or comply with rules of evidence as in a criminal prosecution before a judicial tribunal. Christianson v. Zerbst, 89 F.2d 40 (10th cir., 1937); Ex parte Stanton, 169 Cal. 607 (1915). From the essential difference between the powers, objectives and probative requirements of the criminal court, in trying an Department of Public Welfare, in determining an infraction of a prison rule by the same person and forfeiting his earned good time, it follows that a verdict entered in the former does not affect the jurisdiction of the latter independent tribunal to make a separate decision within the scope of its powers.

An analogous situation was presented in Keats v. Board of Police Com'rs, 42 R.I. 240 (1919), where it was unsuccessfully contended that the conduct of a police officer, which caused his removal from office, had been exonerated by his previous acquittal upon a criminal charge. The court there stated: 'Of course, he cannot be again placed on trial for the same offense in a criminal court. So far as the criminal laws of the state are concerned, he is not guilty of the offense charged in the indictment. But the verdict of not guilty is simply a bar to further criminal prosecution for the same offense.' In Kavanaugh v. Paull, 55 R.I. 41 (1935), where the removal of a chief of police was contested and a like contention held to be without merit, the court observed: 'But the argument is that if he be a * * * felon * * * the legislature cannot authorize his removal by any authority until he has first been indicted, tried and convicted and sentenced by a constitutional court of justice * * *. It is not well to confuse the powers of administrative or executive bodies to remove subordinates for any conduct showing unfitness for place or position, with the proceedings of courts of justice to punish crimes. They are essentially different in their objects, and may and do exist and move in their respective spheres without collision or inconsistency.' In accord with these decisions, holding that an acquittal in a criminal

proceeding does not prevent independent action of an administrative body upon the same conduct involved in the charge of crime, are Bland v. State, 38 S.W. 252 (Tex. App. 1896); State ex rel. Skillman v. Board of Police Com'rs, 64 N.J.L. 489 (1900); People ex rel. Cunningham v. Bingham, 134 App.Div. 602 (N.Y., 1902). Conversely, it has been held that an executive department's removal of a district attorney for acts involving moral turpitude does not adjudicate him guilty of a crime or permit his disbarment under a statute providing for the automatic disbarment of an attorney convicted of a crime involving moral turpitude. In re Reid, 182 Cal. 88 (1920).

The jury in the circuit court of Will County, by its verdict of not guilty, simply determined that the evidence presented did not prove that the relator had killed Richard Loeb with malice aforethought. Moreover, in the criminal case the law required proof beyond a reasonable doubt to authorize conviction. No other criminal offense, nor the guilt or innocence of the relator's conduct apart from the offense specifically charged in the indictment, was presented for consideration. The jury did not attempt to pass upon the question of infraction of penitentiary rules, and a determination of this question would have been void as an invasion of the powers of the executive department. The Department of Public Welfare, on the other hand, did not try relator for a criminal offense nor impose punishment upon him for a crime. Its action was limited to the administration of his indeterminate sentence and, as an inherent part thereof, the rules relating to the diminution of punishment for good conduct. In deciding that the relator had committed an
infraction by fighting with Richard Loeb and cutting him with a razor, the department remained within the limitations of its delegated disciplinary powers. The forfeiture of relator's earned good time, therefore, rested upon five infractions in conformity with the controlling rules, and in a habeas corpus proceeding this court may not interfere with the exercise of an administrative function by attempting to substitute its own judgment or discretion for that of the department. People ex rel. McGeev. Hill, 350 Ill. 129 (1932).

The relator is remanded to the custody of the warden of the Pontiac division of the Illinois State Penitentiary.

Relator remanded.

SUPREME COURT OF ILLINOIS
45 Ill. 2d 434, 259 N.E. 2d 250 (1970)

NATHAN F. LEOPOLD, Jr., Appellant,
v.
MEYER LEVIN et al., Appellees.
No. 41498.

WARD, Justice.

Nathan F. Leopold, Jr., the plaintiff, brought an action in the circuit court of Cook County, which was in the nature of a suit alleging a violation of the right of privacy. The defendants included: the author, publishers and several local distributors of a novel and a play, entitled 'Compulsion,' and the producer, distributor and Chicago area exhibitors of a related motion picture of the same name. The trial court granted the plaintiff's motion for a summary judgment on the question of liability and reserved the issue as to the amount of damages. The defendants appealed to this court but on the plaintiff's motion the appeal was dismissed on the ground that the judgment was interlocutory and, hence, unappealable. When remanded, the case was assigned to a different judge of the circuit court for pretrial consideration on the question of damages. The defendants as that point contested the judgment which had been entered by the predecessor judge. After extended proceedings the succeeding judge vacated the summary judgment in favor of the plaintiff and granted the motions of the defendants for summary judgment and judgment on the pleadings. A direct appeal has been taken by the plaintiff to this court as a constitutional question is involved.

In 1924, Richard Loeb, who is deceased, and Nathan F. Leopold, Jr., the plaintiff, pleaded guilty to the murder and kidnapping for ransom of a 14-year- old boy, Bobby Franks. Following a presentence proceeding, each was given consecutive prison sentences of life and 99 years. The luridness of the crime, the background of the defendants, their representation by the most prominent criminal advocate of the day, the 'trial,' and its denouement attracted international notoriety. Public interest in the crime and its principals did not wane with the passage of time and the case became an historical *cause celebre*.

The novel 'Compulsion' was first published in hardcover in October 1956. The author was the defendant Meyer Levin, who had been a fellow student of Loeb and Leopold and who had served as a reporter for a Chicago newspaper at the time of the crime. All concerned in this appeal agree that the basic framework of the novel, as well as of the subsequently produced movie, was factually provided by the kidnapping and murder of Bobby Franks, the events leading to the apprehension of Leopold and Loeb, and their prosecution. However, as the author

himself, in the foreword of the book, wrote: 'Though the action is taken from reality, it must be recognized that thoughts and emotions described in the characters come from within the author, as he imagines them to belong to the personages in the case he has chosen.' And, 'I follow known events. Some scenes are, however, total interpolations, and some of my personages have no correspondence to persons in the case in question. This will be recognized as the method of the historical novel. I suppose Compulsion may be called a contemporary historical novel or a documentary novel, as distinguished from a *roman a clef*. (That is, a novel drawing upon actual occurrences or real persons under the guise of fiction.')

Neither the name of Loeb or Leopold appear in the foreword, and fictitious names are used in the novel itself for all persons who may have been involved in the case. However, the names of Loeb and the plaintiff were used in advertising the novel. Illustrative of this, on the paper jacket to the hardcover edition it was said: 'This book is a novel suggested by what is possibly the most famous and certainly one of the most shocking crimes ever committed in America--the Leopold-Loeb murder case.' On the page preceding the title page of the paperback edition of 'Compulsion', which was first published in 1958, the following appeared: 'In his novel based upon the Leopold-Loeb case, Meyer Levin seeks to discover the psychological motivation behind this monstrous deed.' The back cover of the paperback noted that "Compulsion' is a spellbinding fictionalized account of one of the most famous and shocking crimes of our age--the Leopold-Loeb murder case.'

The case had been of interest to other authors. For example, in 1957, a novel, 'Nothing But The Night,' by James Yaffe was published. It bore a fictionalized resemblance to the Leopold-Loeb case, but had a different locale and no reference was apparently made in the advertising of it to the actual case. In the same year a factual account of the life and crimes of Leopold and Loeb by Maureen McKernan, entitled, 'The Amazing Crime and Trial of Leopold and Loeb' was published and widely advertised. In 1957, too, an account of the kidnapping, murder and prosecution written by the plaintiff for compensation appeared in serialized form for several weeks in a Chicago newspaper. Story captions included: 'Leopold Tells Own Story--How It Felt To Be A Killer' 'Leopold Arrested; Time For Him To Use Alibi'; 'Darrow Makes Masterful Plea For Understanding.' He was granted parole in 1958 and that year his autobiographical story, 'Life Plus 99 Years,' which included a description of his detection and prosecution and their personal consequences, was published. It was given extensive publicity.

The motion picture 'Compulsion' was released in April, 1959. Several major characters in the film, including the one corresponding to the appellant, were styled to resemble actual persons in the case. Fictitious names were used, though, and no photographs of the appellant or any other person connected with the case appeared in the movie or in any material used to promote the film. The promotional material did refer to the crime. In a brochure prepared for movie exhibitors, entitled 'Vital Statistics,' 20th Century Fox Film Corporation, a defendant, outlined the likenesses and differences between the movie and the actual events, and declared: 'It should be made clear emphatically that 'Compulsion' is not an effort to reproduce the crime of Leopold and Loeb, nor
their trial. The screenplay was taken from a recognized work of fiction 'suggested' by the Leopold-Loeb case, but neither the author of the book nor the producer of the film has attempted

anything but to tell a dramatic story....The picture is in no way a documentary and its makers have attempted only to translate the book into terms of good dramaturgy.' One motion picture exhibitor, the Woods Theatre in Chicago, owned by a defendant here, in advertising the movie used a photographic enlargment of the back cover of the paperback book edition of 'Compulsion' in which the plaintiff's name was used, as has been described. It displayed also a blow-up or enlargement of portions of reviews given the movie in which the plaintiff's name had been mentioned. His name also was introduced during personal, radio and television interviews in various cities by certain of the defendants in the course of their promotion of the motion picture.

The plaintiff acknowledges that a documentary account of the Leopold-Loeb case would be a constitutionally protected expression, since the subject events are matters of public record. Also constitutionally protected, the plaintiff continues, would be a completely fictional work inspired by the case if matters such as the locale would be changed and if there would be no promotional identification with the plaintiff. Leopold's claim is that the constitutional assurances of free speech and press do not permit an invasion of his privacy through the exploitation of his name, likeness and personality for commercial gain in 'knowingly fictionalized accounts' of his private life and through the appropriation of his name and likeness in the advertising materials. Denying him redress would deprive him, he argues, of his right to pursue and obtain happiness guaranteed by section 1 of article II of the constitution of Illinois.

While the question of a right of privacy has not until now been considered by this court, such a right has been recognized in other courts of this State. It was first acknowledged at the appellate level in the case of Eick v. Perk Dog Food Co. 347 Ill.App. 293 (1952), and there has been implicit recognition of it by the legislature through its enactment of a statute of limitations for suits complaining of violations of privacy. (Ill.Rev.Stat.1967, ch. 83, par. 14; see Laws of 1959, p. 1770.) A right of privacy has been recognized in more than 30 States in addition to the District of Columbia. See Time, Inc. v. Hill, 385 U.S. 374 (1967); Prosser, Law of Torts, 3rd ed. (1964), sec. 112 at 831--832.

The dimensions of the right in Illinois have thus far been conservatively interpreted under the appellate courts' decisions. In *Eick*, where the interest in privacy was first admitted, a blind girl's photograph was used without her consent in promoting the sale of dog food. The court held that the allegation of these facts stated a good cause of action for violation of the right of rivacy. The court observed, though, that the right of privacy is a limited one in areas of legitimate public interest as where there is a legitimate news interest in one's photograph or likeness as a public figure. (347 Ill.App. at 299; but cf. Annerino v. Dell Publishing Co., 17 Ill.App.2d 205(1958)). Later, in Bradley v. Cowles Magazines Inc. 26 Ill.App.2d 331 (1960), a case holding that a mother had no cognizable claim that her right of privacy had been violated by the publisher of Look magazine when it publicized the murder of her son, the court stated that *Eick*, itself, was limited to its conclusion--'that a private person would be protected against the use of his portait for commercial advertising purposes.' (26 Ill.App.2d at 333). It was observed in *Bradley* too, that the purpose underlying the right of privacy action was 'To find an area within which the citizen must be left alone' and that, viewing the possible development of the right, 'It is important ... that in defining the limits of this right, courts proceed with caution.' (26 Ill.App.2d at 334). There have been no appellate court cases subsequent to *Bradley*, which have admitted a

broader right than was announced in *Eick*. See Buzinski v. Do-All Co., 31 Ill.App.2d 191 (1961), Carlson v. Dell Publishing Co., Inc., 65 Ill.App.2d 209 (1965).

We agree that there should be recognition of a right of privacy, a right many years ago described in a limited fashion by Judge Cooley with utter simplicity as the right 'to be let alone.' Privacy is one of the sensitive and necessary human values and undeniably there are circumstances under which it should enjoy the protection of law. However, we must hold here that the plaintiff did not have a legally protected right of privacy. Considerations which in our judgment require this conclusion include: the liberty of expression constitutionally assured in a matter of public interest, as the one here; the enduring public attention to the plaintiff's crime and prosecution, which remain an American *cause celebre*; and the plaintiff's consequent and continuing status as a public figure.

It has been expressly recognized by the Supreme Court that books, as well as newspapers and magazines, are normally a form of expression protected by the first amendment and that their protection is not affected by the circumstances that the publications are sold for profit. (Time Inc. v. Hill, 385 U.S. 374 (1967) and cases there cited.) Pertinently, too, the Supreme Court earlier declared in Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952) : 'It cannot be doubted that motion pictures are a significant medium for the communication of ideas. They may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression. The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform. As was said in Winters v. People of State of New York, 333 U.S. 507 (1948) : 'The line between the informing and the entertaining is too elusive for the protection of that basic right (a free press). Everyone is familiar with instances of propaganda through fiction. What is one man's amusement, teaches another's doctrine.' It is urged that motion pictures do not fall within the First Amendment's aegis because their production, distribution, and exhibition is a large-scale business conducted for private profit. We cannot agree. That books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment. We fail to see why operation for profit should have any different effect in the case of motion pictures. ... For the foregoing reasons, we conclude that expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments.'

In Time, Inc. v. Hill, the Supreme Court for the first time had occasion to consider directly the effect of the constitutional guarantees for speech and press upon the rights of privacy. There, as will be seen, the right of privacy when involved with the publication of a matter of public interest was viewed narrowly and cautiously by the court. That decisional attitude toward publication is consistent with other first amendment holdings of the court in recent years, especially in the areas of libel and obscenity, where the announced objective was to insure 'uninhibited, robust and wide-open' discussion of legitimate public issues or to protect published materials unless they are 'utterly without redeeming social value.' E.g. (libel) New York Times Co. v. Sullivan, 376 U.S. 254 (1964) ; Curtis Publishing Co. v. Butts, 388 U.S. 130

(1967), (obscenity) A. Book Named 'John Cleland's Memoirs of a Woman of Pleasure' v. Attorney General, 383 U.S. 413 (1966); Redrup v. New York, 386 U.S. 767 (1967).

It is of importance here, too, that the plaintiff became and remained a public figure because of his criminal conduct in 1924. No right of privacy attached to matters associated with his participation in that completely publicized crime. (See Prosser, Law of Torts, 3rd ed. (1964), sec. 112; Restatement of the Law of Torts, s 867, Comment C.) The circumstances of the crime and the prosecution etched a deep public impression which the passing of time did not extinguish. A strong curiosity and social and news interest in the crime, the prosecution, and Leopold remained. (Consider: Bernstein v. National Broadcasting Co., 129 F.Supp. 817 (D.C.C.,1955); Estill v. Hearst Publishing Co., 186 F.2d 1017 (7th Cir.,1951); Restatement of the Law of Torts, s 867, Comment C.) It is of some relevance, too, in this consideration, that the plaintiff himself certanly did not appear to seek retirement from public attention. The publication of the autobiographical story and other writings and his providing interviews unquestionably contributed to the continuing public interest in him and the crime. Having encouraged public attention "he cannot at his whim withdraw the events of his life from public scrutiny." Estate of Hemingway v. Random House, Inc., 23 N.Y.2d 341 (1968).

A carefully narrowed argument of the plaintiff appears to be that the defendants through 'knowingly fictionalized accounts' caused the public to identify the plaintiff with inventions or fictionalized episodes in the book and motion picture which were so offensive and unwarranted as to 'outrage the community's notions of decency.' (Sidis v. F--R Pub. Corp., 113 F.2d 806 (2d cir. 1940) see, Time, Inc. v. Hill, 385 U.S. at 382, 1967). However, the core of the novel and film and their dominating subjects were a part of the plaintiff's life which he had caused to be placed in public view. The novel and film were derived from the notorious crime, a matter of public record and interest, in which the plaintiff had been a central figure. Further, as the trial court appeared to do, we consider that the fictionalized aspects of the book and motion picture were reasonably comparable to, or conceivable from facts of record from which they were drawn, or minor in offensiveness when viewed in the light of such facts. *Sidis*, upon which the plaintiff bottomed this argument of outraging 'the community's notions of decency,' involved the publishing of a 'profile' of a one-time prodigy. A magazine article disclosed his undistinguished achievement as an adult and described some of his eccentricities. The court held the publication proper but in a dictum observed: 'Revelations may be so intimate and so unwarranted in view of the victim's position as to outrage the community's notions of decency.' Even if one were to accept the validity of the dictum for the purpose of discussing it, the genesis of the fictionalized episodes in 'Compulsion,' as we have observed, can be traced in a substantial way to the exposed conduct of Leopold. Argument that the community's notions of decency were outraged here must be regarded as fanciful.

The contention that a right of privacy was violated by an appropriation, without consent, of the plaintiff's name and likeness for the commercial gain of the defendants through their advertisements must also fail. The circumstances here obviously are distinugishable from those in cases such as Eick v. Perk Dog Food Co., which the plaintiff cites. There, as has been noted, a likeness, i.e., a photograph of a girl who was clearly not a public figure, was 'appropriated' to promote a purely commercial product. Unlike here, no question of freedom of expression was

presented. The reference to the plaintiff in the advertising material concerned the notorious crime to which he had pleaded guilty. His participation was a matter of public and, even, of historical record. That conduct was without benefit of privacy.

We consider that Time, Inc. v. Hill, 385 U.S. 374 (1967) to which reference has been made, does not support the plaintiff's positions. Hill and his family had been held in their home as hostages for 19 hours by escaped convicts. Their captors did not mistreat them in any way. After the incident Hill moved to another State and discouraged all attempts to keep his family in public view. A book and later a play partly drawn, it would appear, from the incident were published and *Life* magazine carried an artice about the play. In the play the author had some members of the captive family subjected to violence and a daughter to verbal abuse. *Life's* article allegedly gave the false impression that the play did reflect what had happened to the Hill family. The Supreme Court held that the constitutional protections of free speech and press prevented Hill's recovering under the New York privacy statute because of this false report of a matter of public interest, unless upon remand of the case there was a showing that the magazine had published the report with knowledge of its falsity or in reckless disregard of the truth. It is clear that Time, Inc. involved a situation essentially dissimilar from the one here. The case involved what was claimed to be a false but purportedly factual account of the Hill incident. Here, the motion picture, play and novel, while 'suggested' by the crime of the plaintiff, were evidently fictional and dramatized materials and they were not represented to be otherwise. They were substantially creative works of fiction and would not be subject to the 'knowing or reckless falsity' or actual malice standards discussed in Time, Inc. v. Hill, where the court considered an untrue but supposedly factual magazine account. Consider: *Privacy, Defamation and the First Amendment: The Implications of Time, Inc. v. Hill*, 67 Columbia L.Rev. 926; *Right of Privacy v. Free Press: Suggested Resolution of Conflicting Value*s, 28 Ind.L.J. 179; Spahn v. Julian Messner, Inc., 21 N.Y.2d 124 (1967)(dissenting opinion); Donahue v. Warner Bros. Pictures Distributing Corp., 2 Utah 2d 256 (1954).

Spahn v. Julian Messner, Inc., 21 N.Y.2d 124 (1967), which is offered as authority by the plaintiff, is basically irrelevant to the questions posed by 'Compulsion.' There, a publication which was offered as a biography of Warren Spahn, the well known baseball pitcher, contained much false material concerning his private life. A judgment under the New York privacy statute in favor of Spahn, a public figure, was upheld and the case was apparently settled, though the Supreme Court had noted 'probable jurisdiction' and placed the case on its summary calendar. It is unnecessary to consider the validity of the holding because of the clear dissimilarity between 'Compulsion' and a biography of Spahn.

There was also error, the plaintiff complains, in the second trial court's vacation of the summary judgment, which had been entered for Leopold on the issue of liability by the first trial court, and in ordering summary judgment for the defendants. The argument is that the second trial court's authority was confined to pretrial matters relating to damages under Rule 218 of this court, Ill.Rev.Stat.1969, c. 110A, s 218 and that it wrongfully acted as a reviewing court when it vacated the summary judgment for the plaintiff. However, section 57(3) of the Civil Practice Act which authorizes summary judgment on the sole issue of liability, declares that such judgments are 'interlocutory in character.' (Ill.Rev.Stat.1967, ch. 110, par. 57 An interlocutory

order may be modified or vacated at any time before final judgment. (Richichi v. City of Chicago, 49 Ill.App.2d 320, 1964) While full and careful consideration should be given before such a judgment is vacated, it may, before final judgment, be set aside to correct an error. Shaw v. Dorris, 290 Ill. 196 (1919); Roach v. Village of Winnetka, 366 Ill. 578 (1937); see also McGilton v. Mobay Chemical Co., 40 F.R.D. 483 (N.D. West Va., 1966).

We conclude that the judgment of the circuit court of Cook County which vacated the summary judgment for the plaintiff on the issue of liability and granted summary judgment and judgment on the pleadings in favor of the defendants was proper. Accordingly, the judgment is affirmed.

Judgment affirmed.

KLUCZYNSKI, J., took no part in the consideration or decision of this case.

CASELAW

CITATIONS TO LEOPOLD AND LOEB

Despite being one of the most famous trials in American legal history, the Leopold and Loeb case (often inverted to Loeb-Leopold) has been cited in only 29 court opinions; 9 from 1926 to 1941, and 20 from 1958 to the present. They are set out in chronological order below.

Despite the relative sparcity of subsequent legal history, the citing cases fall within a range of five distinct legal issues:

* Prison conditions ; the death of Loeb in prison is the context for People ex rel Day reproduced in full above.

* "Privacy" claims by "public" figures which is the basis of Leopold v. Levin reproduced in full above.

* The death penalty v. life imprisonment and potential for rehabilitation.

* Trial strategy of pleading guilty to the crime and litigating the penalty.

* Inflamatory or prejudicial comparisons of subsequent defendants to Leopold and Loeb.

People v. Fitzgerald, 322 Ill. 54, 152 N.E. 542 (1926)

State v. Genna, 163 La. 701, 112 So. 655 (1927)

Fukunaga v. Territory of Hawaii, 33 F.2d 396 (9th Cir., 1929)

Snook v. State, 34 Ohio App. 60, 170 N.E. 444 (1929)

Burrows v. State, 38 Ariz. 99, 297 P. 1029 (1931)

People v. Parisi, 270 Mich. 429, 259 N.W. 127 (1935)

People v. White, 365 Ill. 499, 6 N.E.2d 1015 (1937)

State v. Pierre, 189 La. 764, 180 So. 630 (1938)

People ex rel Day v. Lewis, 376 Ill. 509, 34 N.E.2d 712 (1941)

Clark v. United States, 259 F.2d 184 (D.C.Cir.,1958)

Leach v. United States, 334 F.2d 945 (D.C.Cir.,1964)

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DRAMATIC INTERPRETATIONS

"COMPULSION"

1959 black/white 103 minutes. Salem Press Rating: B
Director: Richard Fleischer, Producer: Richard D. Zanuck for Twentieth Century-Fox.

CAST

Judd Steiner -- Dean Stockwell
Jonathan Wilk -- Orson Welles
D. A. Horn -- E. G. Marshall
Max Steiner -- Richard Anderson
Tom Daly -- Edward Binns
Mrs. Strauss -- Louise Lorimer
Padua -- Gavin MacLeod
Edgar Llewellyn -- Russ Bender
Detective Davis -- Harry Carter
Judge -- Voltaire Perkins
Coroner -- Jack Lomas
Waiter -- Henry Kulky
Artie Straus -- Bradford Dillman
Ruth Evans -- Diane Varsi
Sid Brooks -- Martin Milner
Lieutenant Johnson -- Robert Simon
Mr. Strauss -- Robert Burton
Mr. Steiner -- Wilton Graff
Benson -- Terry Becker
Emma -- Gerry Lock
Detective Brown -- Simon Scott
Albert -- Peter Brocco
Jonas Kessler -- Wendell Holmes
Doctor -- Dayton Lummis

Screenplay : Richard Murphy; based on the novel of the same name by Meyer Levin.
Cinematographer: William C. Mellor, Editor: William Reynolds
Award Citations : GP, Winner, Other Prizes for Feature Films,GP, Winner, Actor, Dean Stockwell, Bradford Dillman and Orson Welles

Abstract: Based on the infamous Leopold and Loeb case, the film is a disturbing account of two young men's decision to prove their intellectual superiority by committing the "perfect crime" -- a motiveless murder. Orson Welles plays the brilliant lawyer who defends the pair (a character based on Clarence Darrow), and E. G. Marshall portrays the persistent district attorney.

"COMPULSION" is a fictional thriller suggested by the Leopold and Loeb case, one of the most famous murder trials in American legal history. On May 21, 1924, two law students at the University of Chicago, Nathan Leopold, age nineteen, and Richard Loeb, age eighteen, attempted to commit the "perfect crime" by murdering fourteen-year-old Robert Franks. There was no motive. Arrested and brought to trial, Leopold and Loeb were defended by Clarence Darrow, the crusading lawyer who had devoted much of his life to campaigning against capital punishment. As a result of Darrow's efforts, the youths, who pleaded guilty, did not receive the death sentence but were instead sentenced, on September 10, 1924, to "99 years plus life." In the fall of 1956, Meyer Levin, a campus contemporary of the two murderers and,

like the character of Sid Brooks in COMPULSION, a journalist on the college newspaper, published a best-selling novel based on the case. The novel was swiftly turned into a Broadway play and the screen rights were acquired by Darryl F. Zanuck in December, 1957.

"COMPULSION", which went into production in October, 1958, in the slightly unusual combination of black-and-white and CinemaScope, was twenty-three-years-old Richard D. Zanuck's first production for his father's company. It was adapted for the screen by Richard Murphy, whose previous credits include such realist social melodramas as BOOMERANG (1947) and PANIC IN THE STREETS (1950); his screenplay is at its best in the earlier, pretrial scenes, where it has a sparseness and energy not always found in the trial itself. One casting anecdote is worth relating with regard to the trial scene. Zanuck's original plan was to get a real judge; he failed, but the actor who finally got the part, Voltaire Perkins, was not only an ex-lawyer and one-time protem judge, but also a family friend of Clarence Darrow and the latter's guest at the original Leopold and Loeb trial. Television audiences also had come to know him as the familiar presiding judge in the long running series DIVORCE COURT.

"COMPULSION" concerns two wealthy Chicago teenagers, Judd Steiner (Dean Stockwell) and Artie Straus (Bradford Dillman), students of law and of Nietzsche, who are determined to prove their intellectual superiority not only by confronting their professors (Artie faces down one of his supposed mentors on the question of evolution and the survival of the fittest), but also by commiting a series of petty crimes without getting caught. The movie opens with a precredit sequence which fairly accurately sums up Fleischer's ability to create a sense of menace without the use of overt violence (an achievement repeated in the early scenes of his British-made thriller "Blind Terror, released in the United States as See No Evil, 1971). The boys steal a typewriter and then attempt to run down a drunk casually encountered on the road home. The sequence is genuinely disturbing in its random, uncommented viciousness. Shortly afterwards, the drowned body of a boy is found in a local park. Covering the story as part-time reporter for the "Chicago Globe", student Sid Brooks (Martin Milner) visits the morgue to find that the child has been battered to death, and that a pair of glasses has been found near the body. The police trace the glasses to, among others, Judd because of a specially designed hinge, and he is questioned by District Attorney Horn (E. G. Marshall). He sticks to the alibi earlier
agreed to with Artie, and although Horn calls in the latter to check the story, he is on the point of letting them go when the Steiner family chauffeur arrives with an overnight case for Judd and inadvertently destroys the alibi. By the time the brilliant lawyer Jonathan Wilk (Orson
Welles) has been engaged to defend the pair, their guilt is established beyond all doubt (as indeed happened in the Leopold and Loeb case, where the families thought the idea of their sons committing murder so preposterous that they did not engage Darrow until confessions had been obtained).

Rather than face a jury trial in a case in which public hostility has been raised to fever pitch, Wilk (who has already had a burning cross planted on his lawn by the local Ku Klux Klan) enters a plea of guilty, claiming that the boys, though not technically insane, were

"sick" and could not be held entirely responsible. In the course of a rousing summing-up, Wilk (Welles was aged for the role by means of a shaved hairline, body padding, latex bags under his eyes, and dyed hair) pulls out all the stops. Slightly improbably reducing E. G. Marshall to respectful silence in what is "believed to be the longest speech ever delivered on screen" (although at fifteen minutes, rather less than Darrow's two-day, sixty-thousand-word original), Wilk successfully swings the judge away from the almost certain death penalty, ending with a rousing call for: "Life! Any more goes back to the hyena!"

Though the producers were at pains to stress that "the picture is no way a documentary," the parallels with the Leopold and Loeb case -- already fictionalized on stage and screen in “Rope” (1948) -- were lost on nobody, and certainly not on Nathan Leopold. He filed suit in the Chicago Circuit Court in October, 1959, for $1,500,000 damages on the grounds that Levin had "appropriated his name, likeness and personality for profit." “Variety”, which commented on the story, cynically remarked that the lawsuit would not do any harm to the film's box-office potential. “COMPULSION” received generally favorable reviews and did brisk business, grossing about $1,500,000 million and ending up a respectable though not spectacular 48th on Variety's 1959 box-office charts.

On screen for only the last third of the movie in what is almost a guest part, Welles inevitably got the lion's share of the reviews, and his concluding speech was even issued as a phonograph record. The less flamboyant but more subtly impressive performances of Bradford Dillman and Dean Stockwell were also widely praised, however, and the three male leads shared the Best Actor Award at the Cannes Film Festival. Only Diane Varsi in a part with very little substance -- a kind of middle-class redeeming angel whom Judd tries to rape and who ends up comforting him -- got poor reviews. Fleischer's direction was justly praised for its tension and
restraint, particularly in avoiding sensationalism while dealing with a sensational crime (something which he repeated ten years later in his version of the even more horrific Christie case in “Ten Rillington Place).

In retrospect, “COMPULSION” is very much a film of the late 1950's -- a cautious but honest return to the treatment of social issues generally absent from American cinema screens for a decade. The movie is unequivocally against capital punishment, and Wilk's concluding speech is as eloquent an attack on it as the commercial cinema has seen. In this respect, the script is a combination of objectivity and special pleading. No attempt is made to make Straus and Steiner sympathetic characters or to obscure the calculating callousness of their crime; Dillman's Straus is all calm menace gradually shading into imbalance (a role in which the actor has tended to be type-cast ever since). On the other hand, the possibility of our sympathy is kept open since we are not shown the murder, and, despite a number of heavy hints, we do not "discover" who the murderers are much in advance of Horn. The emphasis throughout is on the psychology of the criminals and on the machinery of justice when faced with a crime of this
kind. Fleischer adopts much the same approach to his theme as in “The Boston Strangler (1968), where the point at issue is not who the Strangler is but his coming to terms with his own schizophrenia and the fact that he is the Strangler.

The question of capital punishment aside, however, “COMPULSION” is a finely paced thriller every bit as impressive in its way as Fleischer's masterful 1951 film “The Narrow Margin. Particularly impressive is the suppressed hysteria of such scenes as the assault on the drunk, Horn's cat-and-mouse cross-examination of Judd and Artie and Judd's attempted rape of Ruth at the spot of the original murder. At the same time, the hysteria of the scenes never develops into melodramatic rhetoric, even allowing for the discreet and highly effective use of tilted camera angles and ominous compositions during, for example, the cross-examination. Tilted angles in CinemaScope are a risky proposition but Fleischer's use of them in “COMPULSION” is a tribute to his tight, thoughtful control of the film as a whole.

One way in which the film has not aged well, however, is in its cautious treatment of the homosexuality of its two central protagonists. Hailed as courageous at the time, the film in fact portrays Judd's and Artie's homosexuality as very little more than an adjunct to their psychopathic behavior, every bit as sinister and even, perhaps, as dangerous. In almost all other respects, however, “COMPULSION” is an intelligent, committed thriller, using the devices of investigative and courtroom drama to register a strong argument in favor of abolishing capital punishment.

NOTES: Richard D. Zanuck's first film as a producer. Alfred Hitchcock's 1948 film, ROPE, is also loosely based on the Leopold and Loeb case.

REVIEWS: Newsweek: April 13, 1959, p.118. New York Times: April 2, 1959, p.26. Time: April 13, 1959, p.98. Variety: February 4, 1959, p.6.

“NEVER THE SINNER”

The Times of London - October 22, 1996
James Christopher

Courtroom drama transfers from school hall toWest End. On paper John Logan's 1985 play Never the Sinner has all the tools to explore a fascinating slice of real-life macabre. His subject, the motiveless murder of a14-year-old boy by two affluent students in Chicago in 1923, initiated one of the trials of the century and inspired Hitchcock's 1948 film version of PatrickHamilton's play Rope.

What made this crime so disturbing was that Nathan Leopold and Richard Loeb murdered Robert Franks with a chisel for no apparent reason other than a warped obsession with Nietzsche's theories about the master race. Having spent a year conducting his own research into the case, Logan stitched together original court extracts that tell a chilling story of two idealistic teenage homosexuals who fantasise about being intellectually beyond the reach of any moral code.

Unfortunately Philip Swan's production of Never the Sinner at the Arts Theatre is only remarkable for being the first school play ever to transfer to the WestEnd. The cast, all from King's College School, Wimbledon, battle their way through the docu-drama format with more courage than conviction. There are seeds of talent, but the show is really sustained by the sheer novelty of their amateur endeavour.

As the play shuffles between the trial and the events leading to the murder, Adam Chalk's sullen Leopold and Daniel Pirrie's gregariously camp Loeb smoke cigarettes, talk-up their superiority and interact like bank clerks who read dictionaries in their spare time. First-night nerves may have dampened the sexual chemistry. But the sly amorality of Hitchcock's film, which made us side with the killers, is here as elusive as the chilling lack of motive. Beneath the silky good breeding, the greased-back hair and the three-piece suits, you never quite shake the suspicion that Leopold and Loeb are nothing more than a remorseless pair of out-and-out creeps. Where Swan locates his strongest conflict is in the courtroom battle between Simon Sandland's super-neat State Attorney, out to satisfy the bloodlust of Chicago's outraged citizens, and Christopher Day, a teacher from the KCS JuniorSchool, who delivered a wheedling impersonation of the great American lawyer Clarence Darrow. With collar undone, Day's shambling lawyer squints at his clients like a man who has left his wits along with his accent on the number 24 bus. Despite this obvious setback, he still manages to draw a pungent ambivalence around Darrow's stout appeals for mercy.

It was Darrow's introduction of psychiatric evidence - the first time in a murder trial - that commuted the young men's certain death sentences to "life plus 99 years". How much he did it

for the sake of his own reputation is deliciously muddy. His closing summation lasted three days. KCS commendably wrap up Logan's play in an hour and a half. They should take heart from their West End blooding; time, after all, is on their side.

"ROPE"

The San Diego Union-Tribune - Thursday, June 21, 1984
Bill Hagen

It was a daring experiment but, then, so was the Edsel.

And both -- Alfred Hitchock's "Rope" and Ford's considerably costlier fiasco -- got about the same reception when initially released, which was not kind. But both Hitchcock and Ford also bounced back and went on to better things, certainly greater successes.

Unlike the Edsel, "Rope" -- first screened in 1948 -- has now been rereleased. It's one of five Hitchcock movies that had been controlled by his estate, and, with hindsight of almost four decades, it would seem that the movie was unjustly treated first time around.

"Rope" is certainly different from most movies, even contemporary movies, which probably means that in 1948 it was viewed as absolutely radical. The most significant difference is that it was shot in 10-minute takes, rather than the customary one or two minutes. So what it amounted to, in effect, was a filmed stage play, certainly a novelty then. And all the action would transpire in about 80 minutes, the actual time it took to perform it.

Even for Hitchcock -- maybe especially for Hitchcock, since his reputation was already secure and he didn't have to take such chances -- "Rope" was risky. But he also had several factors working in his favor, chief of them a deliciously macabre screenplay by Arthur Laurents, based on a play by Patrick Hamilton and adapted for the screen by Hume Cronyn. It's taut, suspensful, clever, darkly witty and splendidly literate.

The story, loosely based on Leopold-Loeb, deals with two arrogant,well-to-do, psuedo-intellectuals who, for the sheer thrill of it and to prove it can be done perfectly, kill one of their acquaintances in their Manhattan apartment. They stash the body in a large wooden chest, cover it with a cloth, add a candelabra, and set out a buffet on it, from which soon-to-arrive party guests, including the victim's father, will partake. The guest list also includes the victim's girlfriend, her former boyfriend, the victim's aunt and a sardonic former teacher, now a publisher, who taught the murderers and their victim some years earlier in a prep school. He may have, in fact, inspired the murder with his classroom ramblings about "superior beings" being above conventional standards and his most outrageous statement of all: "Murder is a crime for most, but a privilege for the few."

Over the course of the get-together, the old teacher becomes increasingly suspicious of his former students, particularly when the victim, also an invited guest, fails to show up, which is unlike him. The initial surmise is a practical joke. But as the more assertive of the killers continues to drop clues and flaunt his cleverness -- for such a man the worst thing about a perfect

crime is that no one else knows about it -- the suspicions become more terrible. Could these two young men have taken his lectures, his off-the-cuff, enigmatic remarks seriously? He must find out, whatever the danger.

"Rope" is rich with uncommonly macabre touches -- the buffet on the coffin, one of the killers making a gift of some rare books to the victim's father and tying them with the rope used to strangle his son -- which surely appealed to Hitchcock. And all so terribly civilized.It also satisfies a favored Hitchcock approach of letting the audience in on everything, keeping only the hero in the dark, which heightened for Hitchcock the challenge of creating and maintaining suspense.

James Stewart, whose talent Hitchcock used often, is very impressive as the former teacher, a change of pace for him in that he plays a relatively unlikable man -- cool and intelligent, but also shallow and shortsighted.

Considering the way in which "Rope" was made, with the actors having to learn five times more dialogue at a time than normal, the entire cast is impressive. John Dall is perfectly amoral and bloodless as the more arrogant killer, and Farley Granger is nicely nervous as his accomplice. Joan Chandler as the preppy girlfriend is delightful. Sir Cedric Hardwicke, as the victim's father, seems the least comfortable with the unusual way of shooting. Constance Collier, Edith Evanson and Douglas Dick round out the party.

"Rope" is a highly stylized movie and, as with many experiments, it has its imperfections, most noticeably the often clumsy transitions from one reel of film to the next. But it's an intriguing story, as well as a laudable effort at something new.

"Rope" is rated PG.

“SWOON”

Los Angeles Times - Friday, October 2, 1992
Michael Wilmington

Lust, Crime Unite Doomed Teen-Age Lovers in 'Swoon' The story is based on the '20s Loeb-Leopold case involving two Chicago youths who killed a 13-year-old boy.

Tom Kalin's "Swoon" (at the Hillcrest Cinemas) is an inventive low-budget black-and-white movie about killers in love, a doomed couple united by lust and crime whose murderous idyll is cut short by the outside world.

The theme puts it in a rich film noir tradition, in the same vein as "Gun Crazy," "Double Indemnity" or "The Honeymoon Killers." But Kalin has an extra psychological screw-twist. His protagonists are, as the film's trailer announces, "geniuses," "Jews" and "queers." And that's what most concerns the film: the "otherness" of the killers, and the way society paints their crime as a logical eruption of deviance, sexual or otherwise.

The movie's subject is factual: the Loeb-Leopold case, the notorious 1924 "thrill killing" by a pair of Chicago teen-agers, both from fabulously wealthy Jewish families, who went on an eroticized crime rampage that ended in the kidnaping and murder of a 13-year-old boy, eventual capture and a sensational trial. For Kalin, his murderous lovers are as much sinned against as sinning, and this controversial attitude-probably fueled by the AIDS epidemic-splits his movie in two. As a dark poem of love and madness, "Swoon" has an eerie power. As social polemic, it gets
arch and strained.

Kalin's moral stance may bewilder some audiences, who are, after all, being asked to sympathize with the propagators of a heinous crime. Wanting for nothing, both prodigiously intelligent-at 18, Loeb was then the youngest graduate in the history of the University of Michigan-they killed for kicks, for aesthetics, and to seal their erotic bond as two imaginary Nietzschean Ubermenschen.

As the film shows, their "genius" was a delusion. During the murder, they went "blood simple" and only Clarence Darrow's spellbinding courtroom eloquence saved their lives. Loeb, the
psychopath of the two, was killed in prison in a shower brawl; Leopold went through a famous rehabilitation, was paroled and ended his life in exemplary fashion as a medical missionary in Puerto Rico.

Loeb and Leopold have been portrayed in the movies before-most notably by Alfred Hitchcock and Arthur Laurents in "Rope" and Richard Fleischer and Meyer Levin in

Compulsion" - but "Swoon" takes a different tack from either. It doesn't view them from outside. It pulls us into their world, revels in their passion-and while it doesn't shortchange the horror of their crime, it's more concerned with the tidal wave of homophobia breaking around them.

Kalin attacks the notion, common in 1924, that the pair were driven to murder by "inversion." Yet he also rejects the Nietzschean rationale of "Rope," and he doesn't nose much into the idea that not homosexuality but wealth itself was their perversion; that they were spiritual ancestors of Bret Easton Ellis' yuppie maniac in "American Psycho." Instead, Kalin strips the relationship to its primal sadomasochistic core: "Dickie" Loeb (Daniel Schecter) is a narcissistic killer-stud who gets off on crime, and "Babe" Leopold (Craig Chester) is his homelier adorer, going along for the murder-ride out of helpless infatuation.

It's a keen insight, and Chester is perhaps the most convincing screen Nathan Leopold ever. Watching his drooping eyes and awkward, tentative body language, we can understand his enslavement to the confident and conscienceless Loeb. We see Loeb, in some sense, through Leopold's rapt vision-as a dangerous, if flawed, Adonis.This links "Swoon" up with the other "Gay New Wave" films, "Poison," "The Living End" and Christopher Munch's "The Hour and Times"-with its more balanced, if equally revisionist, view of John Lennon and Brian Epstein. The movie is drenched in style. Kalin mixes real or mock-documentary footage with spectral, high-contrast imagery that he and cinematographer Ellen Kuras modeled on Carl Dreyer films like "Vampyr" and "The Passion of Joan of Arc." We're jolted in and out of these "realistic" or visionary modes: a ring exchange in a cavernous cityscape, the horrific woods that backdrop the murder, a campy theatrical with deadpan flapper transvestites, and the sudden, surreal appearance of Loeb and Leopold's bed in the courtroom.

Strangely, in "Swoon" (Times-rated mature for sensuality and violence), the imagined scenes-the murder and lovemaking-often seem paralyzingly real; and the documentary footage or trial scenes a bit phony or campy, with the actors too intent on exposing the stupidity of their own speeches. Kalin wants to expose the absurdity of '20s prejudice, to link it to today. But the satire
and polemic are often less convincing than the dreams and madness. The movie thinks best when it swoons. It can't make us sympathize with murderers, but it can make us see some of the madness of a society that brands all deviance as potentially homicidal.

“Swoon”

Daniel Schlachet: Richard Loeb
Craig Chester: Nathan Leopold Jr.
Ron Vawter: State's Attorney Crowe
Michael Kirby: Detective Savage

A Fine Line Features release. Director/Screenplay/Editor Tom Kalin. Producers Christine Vachon, Kalin. Executive producers Lauren Zalaznick, James Schamus. Cinematographer Ellen Kuras. Costumes Jessica Haston. Music James Bennett. Production design Therese Deprez. Running time: 1 hour, 36 minutes.
Times-rated: Mature (sensuality, violence).